

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

JOHNNY POTTS, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	CIVIL ACTION NO. 3:06cv124-WHA
)	
DYNCORP INTERNATIONAL, LLC, et al.,)	
)	
Defendants.)	

ORDER

This case is before the court on the Plaintiffs' Motion to Amend Complaint (Doc. #29), filed on September 15, 2006, and Defendant Dyncorp International, LLC's Opposition (Doc. #37), filed on September 27, 2006. The court has delayed ruling on this motion pending a determination of the issue of subject matter jurisdiction raised by the Defendant, which issue has been determined by separate order on this day.

The Plaintiffs seek to add an additional Defendant, Dyncorp International FZ-LLC. The Defendant, Dyncorp International, LLC, has objected to the Amendment on the ground that the statute of limitations had run as to any claim against the proposed new Defendant at the time the Motion to Amend Complaint was filed.

This statute of limitations is an affirmative defense. The court has determined that this issue would best be resolved by allowing the addition of the Defendant and, if the statute of limitations is raised as an affirmative defense by the new Defendant, Dyncorp International FZ-LLC, in its Answer, the issue may then be addressed by a timely-filed motion for summary

judgment, with evidence and briefs on the issue filed by all parties. Therefore, the court will grant the Motion to Amend.

The case is also presently pending on a Motion to Dismiss (Doc. #6), filed by Defendant James McCants. Discovery has been allowed on that motion as to the issue of personal jurisdiction, briefs have been filed, and the motion is at issue. The court will consider the Motion to Dismiss by James McCants as being directed to the First Amended Complaint, which the court now allows to be filed, and will resolve the motion by separate order.

It is hereby ORDERED that the Plaintiffs' Motion to Amend Complaint is GRANTED, and the clerk is DIRECTED to file the proposed First Amended Complaint attached to the motion. Plaintiffs are DIRECTED to promptly perfect service on Dyncorp International FZ-LLC.

DONE this 12th day of December, 2006.

/s/ W. Harold Albritton

W. HAROLD ALBRITTON
SENIOR UNITED STATES DISTRICT JUDGE